

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED
9-15-14
02:47 PM

In the Matter of the Application of California-
American Water Company (U 210 W) for
Approval of the Monterey Peninsula Water
Supply Project and Authorization to Recover
All Present and Future Costs in Rates.

A.12-04-019
(Filed April 23, 2012)

**MARINA COAST WATER DISTRICT'S
COMMENTS ON PHASE 2 "GWR" SCHEDULE**

MARK FOGELMAN
RUTH STONER MUZZIN
FRIEDMAN & SPRINGWATER LLP
33 New Montgomery Street, Suite 290
San Francisco, CA 94105
Telephone: (415) 834-3800
Facsimile: (415) 834-1044
Email: mfogelman@friedmanspring.com
Email: rmuzzin@friedmanspring.com

Attorneys for Marina Coast Water District

Date: September 15, 2014

I. INTRODUCTION

In accordance with the August 21, 2014 Ruling Updating Schedule by Administrative Law Judge Angela Minkin (“ALJ”), confirming the ALJ’s email ruling of August 13, 2014 and attaching the Energy Division’s August 11, 2014 letter regarding schedule delays in preparation of the Commission’s Draft Environmental Impact Report (“DEIR”) for the proposed Monterey Peninsula Water Supply Project (“MPWSP”), Marina Coast Water District (“MCWD”) respectfully submits its Comments on the schedule for Phase 2 of this proceeding, wherein the Commission proposes to consider the Groundwater Replenishment Project (“GWR”) for potential concurrent operation with the MPWSP. MCWD understands that decisions concerning the GWR would likely impact the necessary operating capacity of a MPWSP desalination facility. (*See* Sept. 25, 2013 Amended Scoping Memo and Assigned Commissioner Ruling, pp. 4-5; Nov. 4, 2013 ALJ Ruling, pp. 4, 6-7.) The ALJ’s August 21st Ruling notes that there has been a delay in obtaining results of groundwater modeling, which results are needed for preparation of both the DEIR for the MPWSP and the DEIR that the Monterey Regional Water Pollution Control Agency (“PCA”) is preparing for the potential GWR. (ALJ Ruling, pp. 2-3, 4.)

II. THE SCHEDULE DELAY PRESENTS AN OPPORTUNITY FOR THE COMMISSION TO COORDINATE PROCEEDINGS, AS IMPLICITLY REQUIRED UNDER CEQA AND SECTION 1002(a) OF THE PUBLIC UTILITIES CODE.

In general, MCWD agrees that it is appropriate to delay the schedule for the Commission’s consideration of the MPWSP, in light of the delay in groundwater modeling results that also necessitates delay in completion of the DEIR for the MPWSP. While the delay may be disappointing, MCWD believes that the delay also highlights the necessity for

the Commission to consider the full range of potential MPWSP-related impacts prior to rendering its Certificate of Public Convenience and Necessity (“CPCN”) decision on the MPWSP. Such related impacts clearly include the proposed GWR, as well as other cumulative impacts that must be considered in conducting environmental review, as the ALJ’s Ruling noted. (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370, *citing Laurel Heights Improvement Assn. v. Regents of Univ. of Calif.* (1988) 47 Cal.3d 376, 394-396. *See*, Jan. 21, 2014 MCWD Opening Brief on settlement motions, pp. 17-23, *citing Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 128-132, *Laurel Heights, supra*, 47 Cal.3d at 394 and *Rio Vista Farm Bureau Center, supra*, 5 Cal.App.4th at 370; Aug. 30, 2013 MCWD Consolidated Comments on motions to approve settlements, pp. 13-14; May 5, 2012 MCWD Protest of A.12-04-019, p. 5; and Apr. 30, 2012 MCWD Motion to Dismiss A.12-04-019, p. 18 and fns. 105, 106. *See also* July 20, 2012 Surfrider Motion to Amend Scoping Memo and Ruling, pp. 1-4.)

Specifically as to the current status of the Phase 2/GWR schedule, MCWD agrees that it is appropriate to receive testimony and hold hearings on the GWR proposal *after* issuance of the DEIR, which also appears likely to occur after issuance of the DEIR for the MPWSP. (*See* Aug. 21, 2014 ALJ Ruling, pp. 3-5.) MCWD believes that updated testimony concerning the status of the full proposed MPWSP, including potential project alternatives and other relevant factors, following release of the DEIR would be helpful to the Commission and the parties as well. Briefing is now scheduled for nearly two years after close of the 2013 hearings on the MPWSP application and eighteen months after additional limited hearings on specific questions from ALJ Minkin. In the interest of a full, complete and accurate record, MCWD encourages the Commission to broaden the scope of Phase 2

testimony and briefing to encompass newly-developed information relevant to the full MPWSP, rather than limiting the record to testimony and evidence concerning GWR matters alone.

Moreover, it remains MCWD's firm position that the Commission must conduct hearings on *all aspects* of the MPWSP, including all environmental impacts and related issues, such as the cumulative effects of GWR and other projects with potential impact on the groundwater basin that are likely to be implemented, before it may make a public convenience and necessity determination on the MPWSP. The Commission has determined that a hearing is required on public convenience and necessity issues with respect to the MPWSP, and MCWD has repeatedly taken the position in this proceeding that environmental issues must be considered as part of the Commission's CPCN process as well as part of its CEQA compliance process. (*See, e.g.*, Jan. 21, 2014 MCWD Opening Brief on settlement motions, pp. 17-20, *citing* Pub. Util. Code § 1002, subd. (a) and *Northern California Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 370, 378.) The planned Phase 2 schedule appears to ensure that this will be the case with the proposed GWR element, because testimony, hearings and briefing are scheduled to *follow* the end-of-2014 target date for PCA to complete the DEIR for the GWR element. This was also the case with the previously certificated Regional Desalination Project, where the parties' final testimony and evidentiary hearings *followed* the Commission's release of a Final Environmental Impact Review. (*See* Docket, A.04-09-019.) There is no justification for treating the MPWSP schedule differently. Future hearings on the public convenience and necessity of the MPWSP must address and weigh the MPWSP's potential "influence on the environment." (Pub. Util. Code § 1002, subd. (a).)

Finally, MCWD agrees that, commensurate with the currently-contemplated schedule, it is appropriate to schedule briefing on the CPCN for the entire MPWSP, whatever form it will take, to *follow* all testimony and hearings. With the delay in groundwater modeling results, and the resulting necessary delay in issuance of DEIRs for both the MPWSP and GWR, it appears practicable – and desirable – for the Commission to coordinate the hearing, briefing and decision-making schedule so as to address the full range of relevant public interest factors related to the MPWSP desalination project, including GWR, as the single water-supply project that these two project components jointly comprise.

III. CONCLUSION

MCWD urges the Commission to include an opportunity for hearings on the environmental impacts of both the GWR *and* the full MPWSP *following* release of the respective environmental impact statements, in order to achieve a full and complete evidentiary record on all relevant factors that it must consider regarding the MPWSP (Pub. Util. Code § 1002, subd. (a)), and MCWD urges the Commission to coordinate the briefing and decision-making schedule to result in one CPCN decision on the “whole of [the] action” (Pub. Resources Code § 21065; 14 Cal. Code Regs., § 15378(a); *Save Tara v. City of West Hollywood*, *supra*, 45 Cal.4th at 128-132), rather than impermissibly piecemealing its decision-making process.

DATED: September 15, 2014

Respectfully submitted,
FRIEDMAN & SPRINGWATER LLP

By: /s/ Mark Fogelman
Mark Fogelman
Ruth Stoner Muzzin
Attorneys for
MARINA COAST WATER DISTRICT